

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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: CV-07-2067
UNITED STATES OF AMERICA,
ET AL,
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PLAINTIFFS, :
:
V. : U. S. Courthouse
: Brooklyn, New York
CITY OF NEW YORK, :
DEFENDANT. :
:
October 15, 2009
2:30 o'clock p.m.

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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: DAVID ESKEW, AUSA
For Plaintiff Intervenor: RICHARD LEVY, ESQ.
DANA LOSSIA, ESQ.
For the Defendant: WILLIAM S. J. FRANKEL, ACC
Court Reporter: Sheldon Silverman
(718) 613-2537

Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 THE CLERK: USA versus City of New York.

2 THE COURT: Good afternoon, everybody. I called
3 you in because I have the two letters, the letter from
4 Mr. Levy dated October 13th asking for a one-week adjournment
5 on the response on qualified immunity and the city's letter
6 from Mr. Fraenkel objecting to it. I need to work this out.
7 I wish, frankly, if you could work it out amongst yourselves.

8 MR. LEVY: We have.

9 THE COURT: You have?

10 MR. LEVY: It took us to come to court.

11 THE COURT: It's so nice to have you here. Tell me
12 what you've done.

13 MR. LEVY: We actually have a proposal that would
14 really need your approval. I would like to suggest a little
15 different than was in the letters. Mr. Fraenkel is in
16 agreement with this.

17 THE COURT: Tell me.

18 MR. LEVY: We would file on the 30th our papers,
19 both on qualified immunity and on summary judgment.

20 THE COURT: You moved the October 16th qualified
21 immunity and the October 23rd summary judgment to
22 October 30th, is that it?

23 MR. LEVY: Yes.

24 The city would like to respond separately on those
25 two issues. They have proposed responding on qualified

1 immunity on the 16th.

2 THE COURT: Of November?

3 MR. LEVY: November; on the summary judgment,
4 December 2nd.

5 THE COURT: Instead of November 16th?

6 MR. LEVY: Yes. Thanksgiving falls in there.

7 THE COURT: That's good.

8 MR. LEVY: We would then reply on everything on
9 December 18th.

10 THE COURT: The November 25th date on summary
11 judgment reply would be December 18th?

12 MR. LEVY: Yes.

13 THE COURT: As would instead of December 4th --
14 I'm sorry.

15 MR. LEVY: We don't get a reply on qualified
16 immunity. That's their motion. Our response would be in
17 by --

18 THE COURT: One moment. Your summary judgment
19 reply would be December 18th.

20 MR. LEVY: Yes.

21 THE COURT: What about all these other dates on
22 October 28th? I have defendant's proposed relief order class
23 certification response.

24 MR. FRAENKEL: Still good, your Honor. I would
25 tell you Mr. Laimonedes had to have some minor surgery. He's

1 recuperating at home, expected to be in sooner than he will
2 actually be. He's the one who is preparing our response. I
3 consulted with him. He still thinks that date is fine but
4 wanted me to say if for some reason he's not able to get back,
5 he might have to write to your Honor.

6 THE COURT: Before he writes to me, you all should
7 have that conversation to avoid an extra trip. I'm fine with
8 these dates.

9 MR. LEVY: That's great.

10 MR. FRAENKEL: I'm not sure if I heard the date for
11 the trial.

12 THE COURT: That date is going to change now.
13 Obviously, we can't have a trial -- well, I could have a
14 trial but since there's a motion for summary judgment here, we
15 have the qualified immunity issue that won't be briefed until
16 November 16th. I'm going to postpone the trial, let you know
17 about that after I see the papers.

18 MR. FRAENKEL: That was really the main concern;
19 that you have enough time prior to trial to consider qualified
20 immunity.

21 THE COURT: Obviously, frankly, it's helpful the
22 mayor has now been deposed. That gives us -- I hope at
23 least -- I haven't read the transcript. It illuminates the
24 discussion. We'll see. It might have been the best thing
25 done so far in terms of understanding whether qualified

1 immunity should be granted. I'm sure you'll have a lot to say
2 about that in your papers.

3 MR. LEVY: Yes, sir.

4 THE COURT: I'm going to so order those changes.
5 What I would simply ask for plaintiff intervenors is to send
6 me a letter, put it up on E C F and I can so order it there as
7 well so that we have something in writing that's agreed to by
8 the parties. You have it in the transcript here. I've so
9 ordered it, but it's helpful to have it somewhere where you
10 can touch it.

11 MR. LEVY: Thank you.

12 THE COURT: Anything else for today?

13 MR. LEVY: No.

14 THE COURT: Thanks for coming in.

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